

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

TERRY FOUNTAIN,	:	
Petitioner,	:	
vs.	:	CIVIL ACTION NO. 05-0683-CG-C
UNITED STATES OF AMERICA,	:	CRIMINAL ACTION NO. 02-0252-CG
Respondent.	:	

ORDER

After due and proper consideration of all portions of this file deemed relevant to Terry Fountain's application for certificate of appealability and motion for leave to appeal in forma pauperis, the Report and Recommendation of the Magistrate Judge made under 28 U.S.C. § 636(b)(3) is **ADOPTED** as the opinion of this Court. Because reasonable jurists could not find it debatable that this Court erred in denying Fountain relief under Rule 60(b)(6) from its earlier decision denying petitioner's § 2255 motion or that the issue presented in the motion is not adequate to deserve encouragement to proceed further, petitioner's application for certificate of appealability (Doc. 119) is due to be and hereby is **DENIED**. It is further **CERTIFIED** that this appeal is not taken in good faith in that the petitioner has failed to show that he has a non-frivolous issue to be presented to the Eleventh Circuit Court of Appeals. Therefore, petitioner's application for leave to appeal in forma pauperis (Doc. 120) is also **DENIED**.

DONE and ORDERED this the 13th day of April, 2010.

/s/ Callie V. S. Granade
UNITED STATES DISTRICT JUDGE